

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 7, 2001
at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Cecile Tropila, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 317, HB 263, HB 157
3/1/2001
Executive Action: HB 263, HB 329, HB 157, HB
119, HB 184, HB 224, HB 317

HEARING ON HB 317

Sponsor: REP. KEN PETERSON, HD 20, BILLINGS

Proponents: Pam Bucy, Assistant Attorney General
Bert Obert, Colonel MT. Highway Patrol
Scott Wyckman, Justice of Peace, Gallatin County

Karen Bryson, Clerk of City Court, Helena
Troy McGee, MT. Chief of Police Assoc.
Jim Smith, MT. Sheriffs & Peace Officers Assoc.
Tom Butler, MT. Highway Patrol
Robert Throssell, MT. Magistrates Assoc.

Opponents: **None**

Opening Statement by Sponsor:

REP. KEN PETERSON, HD 20, BILLINGS, said this bill is an act providing a police officer signing a criminal charge or complaint need not sign under oath; providing if the complaint has been signed by anyone else. He gave examples of situations where the highway patrol would be issuing citations during late night hours and these officers, under current law, are required to locate a justice of the peace or a notary public before they can turn the citation in. He said this bill affects sworn officers and allows them to issue a citation and would not have to search out a notary public or a justice of the peace.

Proponents' Testimony:

Pam Bucy, Assistant Attorney General, handed out a packet of codes and information **EXHIBIT(jus52a01)**. She stated law enforcement officers believe citations are notices to appear. She pointed out after the offender has received the citation and it is signed by the police officer, the police officer then has to get the citation notarized or 'sworn to' in front of a justice of the peace. This proposal allows law enforcement officers to utilize the notice to appear process as it was designed.

Bert Obert, Colonel MT. Highway Patrol, asked for support of this bill and explained the clarification between a complaint and a notice to appear. He handed out the oath of a police officer **EXHIBIT(jus52a02)**.

Scott Wyckman, Justice of Peace, Gallatin County, felt this bill needs a faster process for filing of these citations. He said this process would allow time management and would be a benefit for clerks to not have to deal with each individual ticket as many times.

Karen Bryson, Clerk of City Court, Helena, said this standardized citation system has duplicate copies and states notice to appear and the agency name on the top of the ticket. She felt this bill would increase the efficiency for law enforcement, courts and defendants.

Troy McGee, MT. Chief of Police Assoc., said they put trust and authority into law enforcement and this should allow them to swear to their notices to appear for this state.

Jim Smith, MT. Sheriffs & Peace Officers Assoc., supports this bill and asked for a do concur.

Tom Butler, MT. Highway Patrol, explained the counties he works in and how difficult the process is trying to receive a notary in the middle of the night especially if the citation was given in a different county than the insured vehicle owner resides.

Robert Throssell, MT. Magistrates Assoc., supports this bill and asked the committee for a do concur action.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. MIKE HALLIGAN asked why there wasn't a immediate effective date. **REP. PETERSON** said there could be an immediate effective date and he thought that was a good point.

SEN. RIC HOLDEN asked for the explanation of the citation and if the offender was to pay cash during the time of the citation, how the police officers record this action. **Bert Obert** explained an officer is to indicate the appearance bond was posted on the bottom of the citation.

SEN. HOLDEN asked if the police officer paper clips the money to the citation. **Bert Obert** answered yes, that is correct.

SEN. HOLDEN referred to an incident with a police officer from Glendive stealing the cash amounts from citations and wondered how they record these. **Bert Obert** explained the incident with the officer in Glendive. He explained how citation money is recorded and they do get audited to be kept up to date.

SEN. JERRY O'NEIL asked if the executive branch takes on a judicial function by citing someone to appear in court. **REP. PETERSON** explained within normal criminal procedures the prosecutor files a complaint or information against someone and that is approved by the court. He said a law enforcement officer should be able to do this procedure also. He said the notary public isn't a part of the judiciary.

SEN. O'NEIL is a complaint signed by an executive officer rather than a judicial officer. **REP. PETERSON** said yes, that is

correct. He added this is a notice to appear and if the offender does not appear, a warrant for their arrest will be issued.

SEN. O'NEIL asked about the title, which states a criminal charge or complaint. **Pam Bucy** said this is a notice to appear and explained the citation as a piece of paper asking the offender to appear in court. She added the law enforcement is not pulling offenders into court the offenders are appearing on their own recognizance and if they do not appear the court will then take action.

SEN. O'NEIL asked if the title of the bill was incorrect. **Pam Bucy** said this is a criminal charge and complaint is what the notice to appear has been interpreted as.

SEN. HOLDEN referred to the citation and asked if a notary did not sign the form, how would that affect the case of the police officer who was stealing money in Glendive. **Pam Bucy** explained the police officer was a sworn law enforcement person and that was what was used against him. She added the need for a notary or to swear before a judge has to do with the charging of a complaint and judicial process.

SEN. AL BISHOP asked if the citation numbers on the tickets are sequential and if the police officer has to account for these tickets. **Bert Obert** answered yes, they are sequential and there is record of each citation used.

Closing by Sponsor:

REP. KEN PETERSON, HD 20, BILLINGS, summarized the need for this bill and felt the bill would be good for enactment of the law.

HEARING ON HB 263

Sponsor: **REP. LARRY JENT, HD 29, BOZEMAN**

Proponents: **Pam Bucy, Assistant Attorney General**
 Bert Obert, Colonel MT. Highway Patrol
 Troy McGee, MT. Chief of Police Assoc.
 Tom Butler, MT. Highway Patrol

Opponents: **None**

Opening Statement by Sponsor:

REP. LARRY JENT, HD 29, BOZEMAN, stated this bill removes the option of a person's drivers license, that was suspended for refusal to take a breathalyzer test to challenge the suspension. He talked about implied consent law, explained licenses and how a person can challenge drug testing. He also explained distances related to offenders, who have to travel to other county courts, to appear for hearings.

{Tape 1; Side B}

Proponents' Testimony:

Pam Bucy, Assistant Attorney General, handed out information for refusal contest **EXHIBIT(jus52a03)**. She said this bill limits the venue for challenging a refusal to the jurisdiction where the incident actually occurs. She felt this bill was appropriate since it the hearing would be held in the same jurisdiction where all other parts of the litigation would be occurring. She defined implied consent law and felt it effective for combating D.U.I. offenders within the state.

Bert Obert, Colonel MT. Highway Patrol, mentioned this bill does not impact due process, but clarifies a process in which a person would have the right to challenge whatever is done by law enforcement. He said this bill eliminates the confusion and he spoke on the impact this would have on every agency in the state.

Troy McGee, MT. Chief of Police Assoc., urged the committee's support of this bill.

Tom Butler, MT. Highway Patrol, felt this bill would assist effective operation of law enforcement and he urged the support of the bill.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. LARRY JENT, HD 29, BOZEMAN, summarized this bill would improve efficiency while maintaining the process rights of the driver.

EXECUTIVE ACTION ON HB 263

Motion/Vote: SEN. HALLIGAN moved that **HB 263 BE CONCURRED IN**. Motion carried unanimously.

HEARING ON HB 329

Sponsor: REP. ROGER SOMERVILLE, HD 78, KALISPELL

Proponents: Pam Bucy, Assistant Attorney General
Dave Ohler, Chief Legal Counsel, Department of
Corrections

Opponents: None

Opening Statement by Sponsor:

REP. ROGER SOMERVILLE, HD 78, KALISPELL, explained the bill and said it would clear up loopholes on registration laws pertaining to sexual and violent offenders. He mentioned wherever these people registered, they need to be registered in the state of Montana and he explicated the effective date and why they need to register to be properly tracked for the law enforcement officials and parents in these areas, who worry about their children.

Proponents' Testimony:

Pam Bucy, Assistant Attorney General, handed out a letter **EXHIBIT(jus52a04)** and information clarifying registration requirements **EXHIBIT(jus52a05)**. She explained the registry and talked about violent offenders versus sex offenders. She clarified the applicability clause this bill would ensure. She referred to incidences with sex offenders and violent offenders and how these offenders need to be registered.

Dave Ohler, Chief Legal Counsel, Department of Corrections, said the department is in support of this bill and asked for a do concur motion from the committee.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. O'NEIL asked if this bill would apply to sex offenders or violent offenders from out of the country. REP. SOMERVILLE said yes, this bill would require any offender to be registered within this state.

SEN. O'NEIL asked if the bill should be amended to add more territories. REP. SOMERVILLE felt if the offenders were under jurisdiction the territories would be added. Pam Bucy said these

territories are included and it is included under the federal definitions with the Sex and Violent Registration Act.

Closing by Sponsor:

REP. ROGER SOMERVILLE, HD 78, KALISPELL, summarized the need for this bill and urged the committee's support.

EXECUTIVE ACTION ON HB 329

Motion/Vote: SEN. DOHERTY moved HB 329 BE CONCURRED IN. Motion carried unanimously.

HEARING ON HB 157

Sponsor: REP. STEVE GALLUS, HD 35, BUTTE

Proponents: Mike Mahoney, Worden, MT State Prison
Mike Micu, Investigator, Dept. of Corrections
Inga Nelson, MEA-MFT

Opponents: None

Opening Statement by Sponsor:

REP. STEVE GALLUS, HD 35, BUTTE, introduced the bill and explained how it dealt with contraband of cigarettes and cash within the state's prison system. He stated these contrabands impose serious threats to the staff and the overall operation of the correctional facilities. This bill would make it a felony for the offenders in possession and an amendment was drafted to clear up language in the bill.

Proponents' Testimony:

Mike Mahoney, Worden, MT State Prison, talked about key elements in the bill referencing how individuals are charged in violation of 45-7-307. He said the intent of this legislation is to prove a deterrent to the individuals, who are inclined to engage in behavior of this nature. He explained that prison and department staff spend a considerable amount of time identifying, confronting and addressing these behaviors.

{Tape 2; Side A}

Mike Micu, Investigator, Dept. of Corrections, described incidences of prison inmates with this behavior bringing cigarettes into the institution and tobacco has a greater value in this arena, where it is against the rules to have. He has worked several cases and explained an incident involving an individual trafficking in tobacco. He felt there is a need for this bill to assist the department and staff in evaluating the sources.

Inga Nelson, MEA-MFT, felt this bill would increase safety of the staff at the state institutions and she urged support of the bill.

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. STEVE GALLUS, HD 35, BUTTE, summarized the need for this bill and asked for a do concur motion.

EXECUTIVE ACTION ON HB 157

Motion: **SEN. DOHERTY** moved **HB 157 BE CONCURRED IN.**

Discussion:

SEN. O'NEIL wondered if this bill would include love letters or notes that inmates would use an illegal article. **Mike Mahoney** said the department and staff are looking at cash and tobacco items. He explained the love letter article would be under a nuisance contraband.

SEN. WALT MCNUTT asked what the list consists of. **Mike Mahoney** said individuals who come to the institution as visitors or volunteers are provided information and training relative to rules and regulations of the institution.

Vote: Motion **carried unanimously.**

EXECUTIVE ACTION ON HB 119

Valencia Lane, Legislative Staff, handed out amendments and explained clarifications to the bill **EXHIBIT(jus52a06)**.

Motion: **SEN. HALLIGAN** moved **HB 119 BE AMENDED.**

Discussion:

Dave Ohler, Legal Counsel, Department of Corrections, talked about expost-facto issues and explained the date of the commission of the crime was important. He thought the committee should keep the date that is listed for the offense rather than the date of sentencing.

SEN. HOLDEN felt skeptical about the amendments and asked for more clarification.

SEN. HALLIGAN WITHDREW amendments 1, 3, and 5 striking those.

Craig Thomas, Executive Director, Board of Pardons and Parole, mentioned the history of this issue. He said this bill should clarify the conflict that was presented in two of the statutes allowing the board to designate hearing examiners and interview individuals appearing before the board.

Vote: Motion HB 119 STRIKING 1, 3, & 5 BE AMENDED carried 8-1 with **SEN. HOLDEN** voting no.

Motion/Vote: **SEN. HALLIGAN** moved HB 119 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 184

Motion/Vote: **SEN. MCNUTT** moved HB 184 BE TABLED. Motion failed 4-5 with **SEN. DOHERTY, CHAIRMAN GROSFIELD, SEN. HOLDEN, SEN. MCNUTT,** and **SEN. O'NEIL** voting no.

Discussion:

SEN. GRIMES understood the bill would allow current records held for indefinite periods of time and would be harder to expunged rather than the records being in a database.

Pam Bucy, Assistant Attorney General, clarified the records being held at the county level. She said the records are going into a database currently and it becomes a difficult process. The criminal history is harder to obtain and it becomes more difficult for the employer to obtain the criminal database rather than a motor vehicle database whereas D.U.I.s are only tracked in.

SEN. GRIMES asked if currently the offender stays in jail until the number of D.U.I.s are compiled and wouldn't this have a net effect of having these people not sit in jail. **Pam Bucy** said

that is correct and every system is trying to move to a national database.

Motion/Vote: SEN. GRIMES moved HB 184 BE CONCURRED IN failed with SEN. DOHERTY, CHAIRMAN GROSFIELD, SEN. HOLDEN, SEN. MCNUTT AND SEN. O'NEIL voting no.

Vote: Motion HB 184 BE TABLED carried 5-4 reversing roll call vote of being concurred in.

EXECUTIVE ACTION ON HB 224

Discussion: Amendments were handed out **EXHIBIT(jus52a07)**.

{Tape 2; Side B}

Motion: SEN. DOHERTY moved HB 224 BE AMENDED.

Valencia Lane explained the three sets of amendments. She pointed out that REP. HURDLE asked her to change the age on page three and it also on page five.

Substitute Motion: moved Amendments 1, 2, & 3.

SEN. HALLIGAN didn't think they needed to restrict a pre-sentence report to individuals with minor children. He supported 13 & 18 of the amendments.

Vote: HB 224 AMENDMENTS 1, 2, 3 BE AMENDED failed 8-1 with SEN. GRIMES voting yes.

Motion: SEN. HALLIGAN moved HB 224 AMENDMENTS 4 & 5 BE AMENDED.

Discussion:

SEN. HOLDEN said these amendments broaden the bill and he opposes the amendments.

SEN. HALLIGAN mentioned treatment plans and the family setting and advised against exclusion due to the age.

Vote: Motion HB 224 AMENDMENTS 4 & 5 BE AMENDED carried 8-1 with SEN. HOLDEN voting no.

Motion: SEN. O'NEIL moved HB 224 AMENDMENTS 02.AVL BE AMENDED.

Discussion:

SEN. O'NEIL explained the second set of amendments. He thought a biological parent should be present if there was a divorce situation.

SEN. DOHERTY referred to language from page three should have been struck and he asked if that was correct. **REP. HURDLE** answered no, that was not correct.

SEN. HALLIGAN felt in some of these cases the legal guardian would be making the decisions. He thought it should not be restricted to one biological parent. **SEN. O'NEIL** said the amendment is inquiring into the defendant's immediate family situation.

SEN. HALLIGAN said the court would have to go to that person whether their rights had been terminated or affected by a legal proceeding. **SEN. O'NEIL** said he could alter the amendment to include the other biological parent.

CHAIRMAN GROSFIELD said language would need to be added as to not restrict it to one biological parent.

SEN. HOLDEN liked the amendments and the language. **SEN. O'NEIL** felt the amendment was fine as written.

SEN. GRIMES commented the pre-sentence reports are lengthy and time consuming. He wondered if the committee would be interested in a substitute motion to strike language. **SEN. O'NEIL** said there is merit to the amendment by adding the language. He felt it was not in conjunction with the intent of the bill whereas the children should be involved.

SEN. GRIMES said the courts will look at that if it is pertinent. He mentioned if these amendments are defined in detail they would have to go into other subsections and work on those also.

SEN. O'NEIL felt the biological parent should know what is happening with their child.

REP. HURDLE commented the reasons for the bill and how there is no account taken of these children when a parent becomes incarcerated.

SEN. O'NEIL mentioned a list of fathers, who were not allowed to be in contact with the children after a divorce. **REP. HURDLE** didn't object to this fact.

Vote: Motion carried 8-1 with SEN. HALLIGAN voting no.

Motion: SEN. HOLDEN moved HB 224 AMENDMENTS 03.AVL BE AMENDED.

Discussion:

CHAIRMAN GROSFIELD said the drafter will change some language on this amendment. He pointed out the structured program allowing the custodial care giving parent to be involved. He wanted the ability to consider the length of term for incarceration.

SEN. HALLIGAN said he deals with termination rights of parents and in most cases those people are abusing the children. He said, under the law, they are required to offer a treatment plan to someone, who is incarcerated. These children are assumed to be abandoned because there isn't a deliberate criminal act to cause the parents to leave their children.

Vote: Motion carried unanimously.

Motion: SEN. DOHERTY moved HB 224 BE CONCURRED IN AS AMENDED.

Discussion:

Substitute Motion: SEN. HALLIGAN moved to insert language into the amendments and strike Section two.

SEN. HALLIGAN said pre-sentence investigation should not be mandatory in every case.

{Tape 3; Side A}

REP. HURDLE said the department was not allowed to do pre-sentence investigations on every case because they would need three F.T.Es. She thought the bill read it was a compromise.

SEN. HALLIGAN said the bill does not read as it was a compromise and he didn't want to have a fiscal note issue.

Valencia Lane agreed with striking section 2 and changing the title language in other areas. **SEN. HALLIGAN** said it should protect the substance of what the sponsor wants the bill to do.

SEN. O'NEIL thought the word "shall" should be struck and replaced with the word "may".

SEN. HALLIGAN explained why the word "shall" should not be excluded from the bill. **SEN. O'NEIL** thought some things may be removed from section two. **CHAIRMAN GROSFIELD** said these changes would not remove language from Section two, but would help deal with conflict with current law.

Vote: SUBSTITUTE MOTION carried unanimously.

Discussion:

SEN. HOLDEN noted the department, who implemented the bill, do not seem to support the bill. He felt a lot of issues would be opened up dealing with new staff and helping this situation to become operational. He pointed to sections in the bill that may open up areas of discussion.

SEN. O'NEIL said the treatment is authorized to mothers', who expect to be the care giving parent after incarceration. He said they need to continue contact with the children. **SEN. HOLDEN** mentioned every mother and father incarcerated would tell them they would be a good parent when they get out of prison. **SEN. O'NEIL** believed the court or the prison would determine if these people would be good parents when they get out of prison.

SEN. HOLDEN asked **SEN. O'NEIL** how an hour of visitation with a convicted felon would change that person to become a good parent. **SEN. O'NEIL** explained when a child attends treatment they get to see the parents and this allows them to be integrated with the family.

CHAIRMAN GROSFIELD felt there was an inconsistency to the amendments. He pointed out page four of the bill and then one of the amendments, which stated "who was a custodial care giving parent". He didn't think the amendment by **SEN. O'NEIL** stating "expected to be" would be clarifying enough.

CHAIRMAN GROSFIELD proposed adding language "who is the parent of a young child and was the custodial care giving parent before incarceration and is expected to be after".

Substitute Motion: **SEN. O'NEIL** moved this language to be added.

Valencia Lane commented where the changes would take place in the amendments.

Vote: SUBSTITUTE MOTION carried unanimously.

Substitute Motion/Vote: **SEN. HOLDEN** made a substitute motion **SB 224 BE TABLED**. Substitute motion failed 2-5 with **SEN. BISHOP** and **SEN. HOLDEN** voting yes.

Vote: Motion carried 6-2 with **SEN. BISHOP** and **SEN. HOLDEN** voting no.

EXECUTIVE ACTION ON HB 317**Discussion:**

SEN. O'NEIL mentioned this allows the police officer a notice to appear without a notary. He said this bill addresses the charges by complaint. **Pam Bucy** disagreed with the interpretation and stated the implied citation form was a uniform citation form for the state. She said by clarifying a notice to appear applies to all misdemeanors that occur within the officer's presence.

SEN. O'NEIL mentioned the case and lawyer he spoke to regarding the notice to appear. He thought another section should be added. **Pam Bucy** said a notice to appear is an invitation to appear and people are not arrested for not appearing on that notice, but when arrested and they fail to appear after the court has issued a warrant.

SEN. O'NEIL asked if this bill allows the police officer more authority to sign a complaint. **Pam Bucy** said it does not change any of that and the same formal requirements would be in effect.

Motion/Vote: **SEN. HALLIGAN** moved **HB 317 ADDING AN IMMEDIATE EFFECTIVE DATE. BE AMENDED. Motion carried unanimously.**
Amendments added **EXHIBIT**(jus52a08).

Motion/Vote: **SEN. HALLIGAN** moved **HB 317 BE CONCURRED IN AS AMENDED. Motion carried unanimously.**

ADJOURNMENT

Adjournment: 11:30 A.M.

SEN. LORENTS GROSFIELD, Chairman

CECILE TROPILA, Secretary

LG/CT

EXHIBIT (jus52aad)